reversed. The defendants have a primary interest in securing work for members of their union and may refuse to work on non-union materials. *Bossert* v. *Dhuy*, 58 N. Y. L. J. 177.

For discussion of this case see Notes, page 484.

INJUNCTIONS — BOYCOTTING COMBINATIONS — TRADE UNIONS. — The defendant union refused to work upon any building upon which non-union men were employed. It ceased work on several buildings upon which plaintiff's non-union men were employed, and in one instance, upon five buildings constructed by a single general contractor, because the plaintiff was employed on one of them. *Held*, members of unions may refuse to work with non-union men. In the one instance it was not an abuse of discretion to refuse an injunction. *Cohn & Roth Electric Co.* v. *Bricklayers, Masons, and Plasterers' Union, No. 1*, 101 Atl. (Conn.) 659.

For discussion of this case see Notes, pages 485.

PUBLIC OFFICERS — LIABILITY FOR PRIVATE MONEYS. — By order of the court the defendant in his official capacity of clerk of court received money paid into court. The defendant deposited this in a solvent bank, which later failed, whereby the money was lost without his fault. *Held*, that the defendant is liable on his official statutory bond, though the funds deposited were private ones. *People for Use of Hoyt* v. *McGrath*, 117 N. E. 74.

The authorities are in conflict regarding the liability of a public officer for the non-negligent loss of funds intrusted to him. The majority rule holds him liable as an insurer. Some courts base this absolute liability upon the strict and unconditioned terms of the bond. *The District Township of Union* v. *Smith*, 39 Iowa 9. Others regard him, in effect, a debtor, and as such, obligated in his official capacity to pay at any event. *Perley* v. *Muskegon County*, 32 Mich. 132; *Tillinghast* v. *Merrill*, 151 N. Y. 135, 45 N. E. 375. This must mean that the official, much like a *del credere* factor, is a trustee, held to the rigid accountability of a common-law debtor. A third line of decisions, in view of the danger of fraud, maintains that considerations of public policy demand the strict rule. *United States* v. *Prescott*, 3 How. 578; *United States* v. *Dashiel*, 4 Wall. 182. Exception is made in case of loss due to acts of a public enemy. *United States* v. *Thomas*, 15 Wall. 337. The minority rule regards the officer as "a bailee resting under special obligations," bound only to exercise due care. *Cumberland County* v. *Pennell*, 69 Me. 357; *Livingston* v. *Woods*, 20 Mont. 91, 49 Pac. 437. The principal case accords with the great weight of authority. It correctly refuses to recognize any distinction between private and public funds. *Northern Pacific Ry. Co.* v. *Owens*, 86 Minn. 188, 90 N. W. 371. See also *Havens* v. *Lathene*, 75 N. C. 505; *contra*, *Gartley* v. *People*, 28 Colo. 227, 64 Pac. 208.

TAXATION — PROPERTY SUBJECT TO TAXATION — ALIMONY NOT SUBJECT TO INCOME TAX. — The question arose whether alimony is "income" within the meaning of the Federal Income Tax Law (38 STAT. AT L. 114, 166). *Held*, that it is not. *Gould* v. *Gould*, U. S. Sup. Ct. Off., October Term, 1917, No. 41.

It may be argued that alimony is taxable within the term "income derived from any source whatever." It was so considered in a ruling of the Treasury Department. Rulings of the Treasury Department, No. 209c (December 14, 1914). But the court was impressed by the fact that alimony "is regarded rather as a portion of the husband's estate to which the wife is equitably entitled." See *Audubon* v. *Shufeldt*, 181 U. S. 575, 577. It is not an allowable deduction in the husband's return and hence is taxed with his general income. Rulings of the Treasury Department, No. 2090, *supra*. To tax it again, in the form of alimony, would be double taxation of the most obvious sort. It is undoubtedly this consideration which led the court to the present

conclusion. In England, it would seem that the husband is allowed to withhold the amount of the tax on such payments as reimbursement for the tax on that portion of his general income. *Cf. Dalrymple* v. *Dalrymple*, 39 Scot. L. R. 348.

WAR — STATUS OF ALIEN — ENEMIES IN COURTS OF JUSTICE. — An action was brought by a German subject resident in Germany. Before the case reached the stage of judgment, war broke out between the United States and Germany. *Held*, the action will not be dismissed, but it will be suspended until peace shall be established. *Plettenberg* v. *Kalmon*, 241 Fed. 605 (District Court, Ga.), and *Stumpf* v. *Schreiber Brewing Co.*, 242 Fed. 80 (District Court, Western District of New York). See Notes, page 471.

WILLS — CONSTRUCTION — DISPOSITION OF ANNUITY ON DEATH OF ANNUITANT. — Testator left the residue of his estate to trustees to pay part of the income to A. annually, and the rest to B. Distribution of the principal was to be made when certain children reached the age of twenty-one years. A. died before the time for distribution. *Held*, that until time for distribution, income reserved for A. should be added each year to that paid to B. *Norman* v. *Prince*, 101 Atl. 126 (R. I.).

Upon the death of a beneficiary before the termination of a trust, his income is not paid to his estate, if there were no words of inheritance. *Weston* v. *Weston*, 125 Mass. 268; *Bates* v. *Barry*, 125 Mass. 83; *In re Taber* [1882], L. J. Ch. (N. S.) 727. But *cf. In re Follett*, 23 R. I. 409. And the questionable rule, that a lapsed residuary bequest shall not go to increase the rest of the residue, would seem to be outweighed by the strong policy in favor of the rule of construction against a partial intestacy. *Weston* v. *Weston*, *supra; In re Bensen*, 96 N. Y. 499. There is little authority as to whether the lapsed bequest should go to increase the principal of the trust fund, or be added to the income of the other beneficiaries. The latter would seem to be proper, unless there is an express provision to the contrary. *Vigor* v. *Harwood*, 12 Simons 172; *Wakefield* v. *Small*, 74 Me. 277; *Butler* v. *Butler*, 101 Atl. 115 (R. I.). *Cf. Angus* v. *Noble*, 73 Conn. 56, 46 Atl. 278. It seems that the result reached by the court effectuates the manifest intent of the testator.

For a discussion of another question in this case, see the February number of this REVIEW.

WILLS — EXECUTION — PUBLICATION BY INTERPRETER. — A statute provides that the testator shall "declare" that the instrument is his will to "two attesting witnesses," who must sign at his "request" (1910, Okla. Rev. L. § 8348). Testatrix was a Creek Indian who understood no English. Her declaration and request were interpreted to witnesses who understood no Creek. *Held*, that the will is invalid. *Hill* v. *Davis*, 167 Pac. 465 (Okla.).

Similar statutory requirements are not uncommon. See 1909, N. Y. Laws, c. 18, § 21. See also 1 JARMAN, WILLS, 6 Am. ed., 112, note 1. The case overrules one decided less than two years previously in the same court. *Pell* v. *Davis*, 155 Pac. 1132 (Okla.). The decision has the support of a *dictum*. See *Stein* v. *Wilzinski*, 4 Redf. (N. Y.) 441, 448. *Cf. Hunn* v. *Case*, 5 N. Y. Sur. 307; *Van Hooser* v. *Van Hooser*, *ibid.* 365. But there is little authority applicable to the question. Attestation has been defined as "the act of witnessing in its full legal import." See SCHOULER, WILLS, EXECUTORS AND ADMINISTRATORS, 5 ed., § 330. Where there can be a publication, it would seem to follow that there can be an attestation. A will has been held published by signs and sounds of a testator stricken with partial paralysis of the vocal organs. *Lane* v. *Lane*, 95 N. Y. 494. And where the testator has the power to understand what is said, the declaration clearly may be made by a third party. See *Heath* v. *Cole*, 15 Hun (N. Y.) 100, 103. See also *Robbins* v. *Robbins*, 50 N. J. Eq. 742, 744. In cases where there is a publication by an interpreter, it be-